



U.S. Department of Justice

*United States Attorney
Southern District of New York*

86 Chambers Street
New York, New York 10007

November 5, 2024

By ECF

The Honorable Colleen McMahon
United States District Judge
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Re: *The New York Times Company v. U.S. Department of Defense*,
24 Civ. 6337 (CM)

Dear Judge McMahon:

This Office represents the United States Department of Defense (“DoD”), defendant in this action brought pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). This case concerns FOIA requests submitted by Plaintiff to three DOD components, the U.S. Central Command (“CENTCOM”), the U.S. Army Special Operations Command (“SOC”), and the U.S. Department of the Army (“Department of Army”) (the “FOIA Requests”). We write jointly with Plaintiff’s counsel to provide the Court with a status update and to respectfully request that the Court relieve the parties of their requirement to submit a Civil Case Management Plan and to appear at the Initial Pretrial Conference, *see* ECF No. 6.

The parties recently met and conferred to discuss the scope of Plaintiff’s FOIA Requests and the status of the processing of the FOIA Requests. As discussed between the parties, CENTCOM has completed its initial searches for potentially responsive records and will soon begin its responsiveness review. CENTCOM, which has been affected by Hurricane Helene and Milton, anticipates completing its responsiveness review within 60 days. SOC identified a responsive video,¹ which it referred to CENTCOM and the United States Special Operations Command (“SOCOM”) for consultation. CENTCOM recently completed its review of the video, and SOCOM anticipates completing its review of the video in the next two weeks. Counsel for the Government intends to update counsel for Plaintiff on the status of SOCOM’s review of the video by November 15, 2024. While the Department of Army does not believe that it is reasonably likely to possess any responsive records other than those identified by SOC, Plaintiff informed the

¹ SOC identified other records responsive to Plaintiff’s FOIA request to SOC, which it withheld under FOIA Exemptions 3 and 6, 5 U.S.C. §§ 552(b)(3), (6). We understand that Plaintiff does not contest these withholdings. *See* Compl. ¶ 22.

Government yesterday that it believes that a Department of Army component possesses responsive records. Accordingly, the parties intend to further meet and confer to discuss whether that Department of Army component is reasonably likely to possess responsive records and whether that Department of Army component or any other component should be searched.

The parties have further discussed and agreed upon the appropriate next steps in this action, subject to the Court's approval. The parties respectfully request that they be relieved of the requirement to submit a Civil Case Management Plan and to appear at the Initial Pretrial Conference, *see* ECF No. 6. Pursuant to Local Civil Rule 16.1, cases involving reviews from administrative agencies, including FOIA cases like this one, are generally exempted from the mandatory scheduling order requirement. Moreover, courts in this district regularly exempt FOIA cases from scheduling order requirements, *see e.g.*, *International Refugee Assistance Project, Inc. v. United States Citizenship and Immigration Services, et al.*, No. 23 Civ. 1236 (S.D.N.Y. 2023), as FOIA cases typically do not involve discovery and are resolved at summary judgment. *See Carney v. U.S. Dep't of Justice*, 19 F.3d 807, 812 (2d Cir. 1994). The parties thank the Court for its consideration of this joint status report and propose to file their next joint status report within 60 days, or by January 3, 2025.

Respectfully,

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